

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM JOHN DAUGHTERY, CDCR) Case No. 08cv0408-WQH (BLM)
#F-79985,)
) **CASE MANAGEMENT CONFERENCE
Plaintiff,)
v.) ORDER REGULATING DISCOVERY AND
) OTHER PRETRIAL PROCEEDINGS
)
DENNIS WILSON, San Diego Police) (Fed. R. Civ. P. 16)
Officer; ESMERALDA TAGABAN, San) (Local Rule 16.1)
Diego Police Officer; SERGEANT) (Fed. R. Civ. P. 26)
GRIFFIN; DETECTIVE LEMUS,)
)
Defendants.)

)**

The Court determines that neither an Early Neutral Evaluation Conference nor a Case Management Conference are needed in this case.
The Court issues the following orders:

IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before May 26, 2008.

2. Each party shall serve on all opposing parties a list of experts whom that party expects to call at trial, on or before July 18, 2008. Each party may supplement its designation in response to the other party's designation no later than August 1, 2008. Expert designations shall include the name, address, and telephone number of

1 each expert and a reasonable summary of the testimony the expert is
2 expected to provide. The list shall also include the normal rates the
3 expert charges for deposition and trial testimony.

4 The parties must identify any person who may be used at trial to
5 present evidence pursuant to Rules 702, 703 or 705 of the Federal Rules
6 of Evidence. This requirement is not limited to retained experts.

7 **Please be advised that failure to comply with this section or any**
8 **other discovery order of the Court may result in the sanctions provided**
9 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
10 **of experts or other designated matters in evidence.**

11 3. All expert disclosures required by Fed. R. Civ. P. 26(a)(2)
12 shall be served on all parties on or before September 19, 2008. Any
13 contradictory or rebuttal information shall be disclosed on or before
14 October 3, 2008. In addition, Fed. R. Civ. P. 26(e)(1) imposes a duty
15 on the parties to supplement the expert disclosures made pursuant to
16 Fed. R. Civ. P. 26(a)(2)(B) by the time that pretrial disclosures are
17 due under Fed. R. Civ. P. 26(a)(3) (discussed below).

18 The parties are advised to consult with Fed. R. Civ. P. 26(a)(2)
19 regarding expert disclosures. Such disclosures shall include an expert
20 report, all supporting materials, a complete statement of all opinions
21 to be expressed and the basis and reasons therefor, the data or other
22 information considered by the expert in forming the opinions, any
23 exhibits to be used as a summary of or as support for the opinions, the
24 qualifications of the witness including a list of all publications
25 authored by the witness within the preceding ten years, the compensation
26 to be paid for the study and testimony, and a list of other cases in
27 which the witness has testified as an expert at trial or by deposition
28 within the preceding four years.

1 This disclosure requirement applies to all persons retained or
 2 specially employed to provide expert testimony, or whose duties as an
 3 employee of the party regularly involve the giving of expert testimony.

4 **Please be advised that failure to comply with this section or any**
 5 **other discovery order of the Court may result in the sanctions provided**
 6 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**
 7 **of experts or other designated matters in evidence.**

8 4. All discovery shall be completed by all parties on or before
 9 **November 14, 2008.** "Completed" means that all discovery under Rules 30-
 10 36 of the Federal Rules of Civil Procedure, and discovery subpoenas
 11 under Rule 45, must be initiated a sufficient period of time in advance
 12 of the cut-off date, so that it may be completed by the cut-off date,
 13 taking into account the times for service, notice, and response as set
 14 forth in the Federal Rules of Civil Procedure.

15 Counsel shall promptly and in good faith meet and confer with
 16 regard to all discovery disputes in compliance with Civil Local Rules
 17 16.5(k) and 26.1(a). **All discovery motions shall be filed within thirty**
 18 **(30) days after counsel have met and conferred and reached an impasse**
 19 **with regard to any particular discovery issue, but in no event shall**
 20 **discovery motions be filed more than sixty (60) days after the date upon**
 21 **which the event giving rise to the discovery dispute occurred.** For oral
 22 discovery, the event giving rise to the discovery dispute is the
 23 completion of the transcript of the affected portion of the deposition.
 24 For written discovery, the event giving rise to the discovery dispute is
 25 either the service of the response, or, if no response was served, the
 26 initial date the response was due. **In addition, all discovery motions**
 27 **must be filed within thirty (30) days after the close of discovery.**

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1 5. All other pretrial motions must be filed on or before January
2 12, 2009. Motions will not be heard or calendared unless counsel for
3 the moving party has obtained a motion hearing date from the law clerk
4 of the judge who will hear the motion. Failure to timely request a
5 motion date may result in the motion not being heard. Motions will not
6 be heard unless you have obtained a date from the judge's law clerk.

7 Questions regarding this case should be directed to the judge's law
8 clerk. The Court draws the parties' attention to Local Rule 7.1(e)(4)
9 which requires that the parties allot additional time for service of
10 motion papers by mail. Papers not complying with this rule shall not be
11 accepted for filing.

12 Briefs or memoranda in support of or in opposition to any pending
13 motion shall not exceed twenty-five (25) pages in length without leave
14 of the judge who will hear the motion. No reply memorandum shall exceed
15 ten (10) pages without leave of the judge who will hear the motion.

16 6. A Mandatory Settlement Conference shall be conducted on
17 November 19, 2008 at 9:30 a.m. in the chambers of Magistrate Judge
18 Barbara L. Major located at 940 Front Street, Suite 5140, San Diego, CA
19 92101. All discussions at the Mandatory Settlement Conference will be
20 informal, off the record, privileged, and confidential. Counsel for any
21 non-English speaking party is responsible for arranging for the
22 appearance of an interpreter at the conference.

23 a. Personal Appearance of Parties Required: All parties,
24 adjusters for insured defendants, and other representatives of a party
25 having full and complete authority to enter into a binding settlement,
26 as well as the principal attorneys responsible for the litigation, must
27 be present in person and legally and factually prepared to discuss
28 settlement of the case. Counsel appearing without their clients

1 (whether or not counsel has been given settlement authority) will be
 2 cause for immediate imposition of sanctions and may also result in the
 3 immediate termination of the conference.

4 Unless there are extraordinary circumstances, persons required to
 5 attend the conference pursuant to this Order shall not be excused from
 6 personal attendance. **Requests for excuse from attendance for**
 7 **extraordinary circumstances shall be made in writing at least three (3)**
 8 **court days prior to the conference.** Failure to appear in person at the
 9 Mandatory Settlement Conference will be grounds for sanctions.

10 b. **Full Settlement Authority Required:** In addition to
 11 counsel who will try the case, a party or party representative with full
 12 settlement authority¹ must be present for the conference. In the case
 13 of a corporate entity, an authorized representative of the corporation
 14 who is not retained outside counsel must be present and must have
 15 discretionary authority to commit the company to pay an amount up to the
 16 amount of the Plaintiff's prayer (excluding punitive damages prayers).
 17 The purpose of this requirement is to have representatives present who
 18 can settle the case during the course of the conference without
 19 consulting a superior. Counsel for a government entity may be excused

21 ¹ "Full settlement authority" means that the individuals at the settlement
 22 conference must be authorized to explore settlement options fully and to agree at that
 23 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
 24 discretion and authority" to change the settlement position of a party. Pitman v.
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
 25 a person with unlimited settlement authority to attend the conference contemplates that
 26 the person's view of the case may be altered during the face to face conference. Id.
 27 at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
 28 Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 from this requirement so long as the government attorney who attends the
2 Mandatory Settlement Conference (1) has primary responsibility for
3 handling the case, and (2) may negotiate settlement offers which the
4 attorney is willing to recommend to the government official having
5 ultimate settlement authority.

6 c. **Confidential Settlement Statements Required:** No later
7 than **November 12, 2008**, the parties shall submit directly to Magistrate
8 Judge Major's chambers confidential settlement statements no more than
9 five (5) pages in length. **These confidential statements shall not be**
10 **filed or served on opposing counsel.** Each party's confidential
11 statement must include the following:

12 (i) A brief description of the case, the claims and/or
13 counterclaims asserted, and the applicable defenses or position
14 regarding the asserted claims;

15 (ii) A specific and current demand or offer for
16 settlement addressing all relief or remedies sought. If a specific
17 demand or offer for settlement cannot be made at the time the brief is
18 submitted, then the reasons therefore must be stated along with a
19 statement as to when the party will be in a position to state a demand
20 or make an offer; and

21 (iii) A brief description of any previous settlement
22 negotiations, mediation sessions, or mediation efforts.

23 General statements that a party will "negotiate in good faith" is
24 not a specific demand or offer contemplated by this Order. It is
25 assumed that all parties will negotiate in good faith.

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1 d. **Requests to Continue a Mandatory Settlement Conference:**

2 Any request to continue the Mandatory Settlement Conference or request
 3 for relief from any of the provisions or requirements of this Order must
 4 be sought by a **written ex parte application**. The application must (1)
 5 be supported by a declaration of counsel setting forth the reasons and
 6 justifications for the relief requested, (2) confirm compliance with
 7 Civil Local Rule 26.1, and (3) report the position of opposing counsel
 8 or any unrepresented parties subject to the Order. **Absent extraordinary**
 9 **circumstances, requests for continuances will not be considered unless**
 10 **submitted in writing no fewer than seven (7) days prior to the scheduled**
 11 **conference.**

12 **If the case is settled in its entirety before the scheduled date of**
 13 **the conference, counsel and any unrepresented parties must still appear**
 14 **in person, unless a written joint motion confirming the complete**
 15 **settlement of the case is submitted no fewer than twenty-four (24) hours**
 16 **before the scheduled conference.**

17 7. If Plaintiff is incarcerated in a penal institution or other
 18 facility, the Plaintiff's presence is not required at conferences before
 19 Magistrate Judge Major, and the Plaintiff may appear by telephone. In
 20 that case, defense counsel is to coordinate the Plaintiff's appearance
 21 by telephone.]

22 8. The parties must comply with the pretrial disclosure
 23 requirements of Fed. R. Civ. P. 26(a)(3) no later than **April 20, 2009**.
 24 The parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of
 25 the required disclosures.

26 **Please be advised that failure to comply with this section or any**
 27 **other discovery order of the Court may result in the sanctions provided**
 28 **for in Fed. R. Civ. P. 37, including a prohibition on the introduction**

1 of designated matters in evidence.

2 9. No Memoranda of Contentions of Fact and Law are to be filed
3 unless so ordered by the Court.

4 10. Counsel shall confer and take the action required by Local
5 Rule 16.1(f)(4) on or before April 27, 2009. At this meeting, counsel
6 shall discuss and attempt to enter into stipulations and agreements
7 resulting in simplification of the triable issues. Counsel shall
8 exchange copies and/or display all exhibits other than those to be used
9 for impeachment, lists of witnesses and their addresses including
10 experts who will be called to testify, and written contentions of
11 applicable facts and law. The exhibits shall be prepared in accordance
12 with Local Rule 16.1(f)(2)(c). Counsel shall cooperate in the
13 preparation of the proposed final pretrial conference order.

14 11. The proposed final pretrial conference order, including
15 written objections, if any, to any party's Fed. R. Civ. P. 26(a)(3)
16 pretrial disclosures, shall be prepared, served, and submitted to the
17 Clerk's Office on or before May 4, 2009 and shall be in the form
18 prescribed in and in compliance with Local Rule 16.1(f)(6). Any
19 objections shall comply with the requirements of Fed. R. Civ. P.
20 26(a)(3). **Please be advised that the failure to file written objections**
21 **to a party's pretrial disclosures may result in the waiver of such**
22 **objections, with the exception of those made pursuant to Rules 402**
23 **(relevance) and 403 (prejudice, confusion or waste of time) of the**
24 **Federal Rules of Evidence.**

25 12. The final pretrial conference is scheduled on the calendar of
26 the Honorable William Q. Hayes on May 11, 2009 at 11:00 a.m. The trial
27 date will be assigned by Judge Hayes at the pretrial conference.

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1 13. The dates and times set forth herein will not be modified
2 except for good cause shown.

3 14. Plaintiff's(s') counsel shall serve a copy of this order on
4 all parties that enter this case hereafter.

5 DATED: April 17, 2008

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7 BARBARA L. MAJOR
8 United States Magistrate Judge

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10 COPY TO:

11 HONORABLE WILLIAM Q. HAYES
12 U.S. DISTRICT JUDGE

13 ALL COUNSEL

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